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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,996	06/04/2007	Paivi Maatta	0696-0249PUS1	4191

2292 7590 06/11/2010
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER

LONG, LUANA ZHANG

ART UNIT	PAPER NUMBER
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1782

NOTIFICATION DATE	DELIVERY MODE
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06/11/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/590,996	Applicant(s) MAATTA ET AL.	
	Examiner LUANA Z. LONG	Art Unit 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>29 August 2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. **Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**
3. Claim 1 recites the limitations "the packaged food" in lines 1-2 of the claim, "the food" in line 3 of the claim, "the edges" in line 4 of the claim, "the rim flange" in line 5 of the claim, "the lower surface" in lines 5-6 of the claim. There is insufficient antecedent basis for these limitations in the claim.
4. Regarding claims 3 and 5, the phrase "such as" renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
5. Claim 6 recites the limitation "the mouth" in line 5 of the claim. There is insufficient antecedent basis for this limitation in the claim.
6. Claims 2, 4, and 7-8 are rejected for their dependence on claims 1 and 6.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Bemiss [US 3,716,370].

9. Regarding claim 1, Bemiss teaches a ready-made food package (Figs 12-18), which consists of a tray (10b) containing the packaged food (col. 4, line 49) and a lid (12b) closing the tray, and in which at least the lid (12b) of the package is made of polymer-coated board (paperboard and has a plastic coating 61 thereon) (col. 4, lines 20-21), characterized in that the food can be baked in the tray included in the package (col. 3, lines 24-25) and in that the edges of the lid (side flaps 62 and 62a and 63 and 63a), by which the tray can be closed after baking, have been bent under the rim flange (11b) of the tray and have been heat sealed to the lower surface of the rim flange (11b) by means of the polymer coating of the lid (col. 4, lines 27-41) (see Figures 15-18).

10. Regarding claim 2, Bemiss teaches that the lid (12b) has additionally been heat-sealed to the upper surface of the rim flange of the tray (sealing can be effected above the flange 11b at 65) (see Fig. 18 and col. 4, lines 29-30).

11. Regarding claim 3, Bemiss teaches that the inner surface of the lid (plastic coating 61) is made of a heat-sealable polymer (may be polyethylene) (col. 4, lines 20-24).

12. Regarding claim 5, Bemiss teaches that an inner surface of the tray is made of heat-resistant polymer (tray 10 may be of polyethylene). Examiner notes that the tray of

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Bemiss is naturally heat-resistant since it is being put into boiling water (col. 1, lines 17-18, col. 3, lines 25-26, col. 4, lines 16-18).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bemiss.

16. Bemiss is relied upon from above for rejecting claim 1.

17. Regarding claim 4, Bemiss discloses that the tray is made of rigid or semi-rigid construction such as polyethylene (col. 1, lines 61-64). Bemiss is silent in regards to the tray being made of polymer-coated board. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the tray of Bemiss so that it is also made of polymer-coated board, since Bemiss discloses that the

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lid of the tray can be a polymer-coated board (col. 4, lines 20-23), since Bemiss discloses that the tray can be rigid, and since Bemiss discloses that the tray is conventional (col. 1, lines 61-64), and polymer-coated boards are conventional.

18. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bemiss in view of Applicants' Admitted Prior Art.

19. Bemiss is relied upon from above for rejecting claim 1.

20. Regarding claim 6, Bemiss discloses a method for manufacturing a ready-made food package of claim 1 comprising the steps of: placing a food in a raw state in a tray in which the food can be baked, closing the tray with a lid, and heating or boiling the package (col. 3, lines 15-26), characterized in that closing is performed by placing a lid blank cut (see Fig. 13, col. 1, lines 54-55) from polymer-coated board (col. 4, lines 20-21) over the mouth of the tray, by bending the edges of the blank under the rim flange (11b) of the tray and by heat-sealing the edges to the lower surface of the rim flange by means of the polymer coating of the board (see Figures 14-18 and col. 4, lines 16-41).

21. Bemiss is silent in regards to *baking* the food in the tray, and closing the tray with a lid *after* the step of baking.

22. However, Applicants admit on page 2, paragraph 1 of the Specification that the food industry manufactures ready-made food packages, in which the tray portion acts as a baking tray at the stage of cooking the food. The food is placed in the tray in a raw state, it is baked at the baking temperature and finally the tray containing the finished ready-made food is closed with a lid.

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23. Since it is known in the food industry to manufacture a ready-made food according to the method disclosed in claim 6, it would have been obvious to one having ordinary skill in the art at the time of the invention to use the food package of Bemiss in the process of the prior art. One having ordinary skill in the art at the time of the invention would be motivated to do this since Bemiss discloses two heat seals on the top and bottom of the flange of the tray (see Figure 18) and a mechanical seal (mechanical closure) (col. 4, lines 51-56), which strengthens the seal of his food package; and since the package of Bemiss would alleviate the prior art problem disclosed by the applicants (page 2, para 2).

24. Regarding claim 7, Bemiss discloses that the lid is also heat-sealed to the upper surface of the rim flange of the tray (See Fig. 18).

25. Regarding claim 8, Bemiss discloses that the lid blank comprises creased folding lines (scored line 64) (col. 4, line 26), along which bending of the edges is carried out (see Figs. 14-18).

26. Regarding claim 9, Bemiss discloses the use of a tray made of polymer as a baking tray in the manufacture of ready-made food packages, comprising closing the tray with a lid made of polymer-coated board (col. 3, lines 15-26), the edges of the lid being bent under the rim flange of the tray and heat-sealed to the lower surface of the rim flange by means of the polymer coating (see Figs. 15-17, col. 4, lines 27-31).

27. Bemiss is silent in regards to the tray being made of a polymer-coated *board*, and closing the tray with a lid *after* a step of baking.

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28. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the tray of Bemiss so that it is also made of polymer-coated board, since Bemiss discloses that the lid of the tray can be a polymer-coated board (col. 4, lines 20-23), since Bemiss discloses that the tray can be rigid, and since Bemiss discloses that the tray is conventional (col. 1, lines 61-64), and polymer-coated boards are conventional.

29. Applicants' Admitted Prior Art is relied upon from above for rejecting claim 6.

30. It would also have been obvious to one having ordinary skill in the art at the time of the invention to use the food package of Bemiss so that the tray is closed with a lid after a step of baking, since this is a known way of using a food package. One having ordinary skill in the art at the time of the invention would be motivated to use the food package of Bemiss due to the advantages of multiple seals (see Figure 18), which strengthens the closure of his food package; and since the package of Bemiss would alleviate the prior art problem disclosed by the applicants (page 2, para 2).

Conclusion

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **Ito [US 3,890,448]** discloses a heatable package of food where the package comprises a heat-sealable, and heat resistant (col. 5, line 64) polyester layer (col. 4, lines 18-23).

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32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUANA Z. LONG whose telephone number is 571-270-1152. The examiner can normally be reached on 8:30 AM - 5:00 PM.

33. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

34. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. Z. L./
Examiner, Art Unit 1782

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782